IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MFA.No. 1222 of 2001(A)

OPMV.251/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
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APPELLANT:

NATIONAL INSURANCE COMPANY LTD.,
REP. BY ITS ASSIST. ADMINISTRATIVE OFFICER,
KOCHI REGIONAL OFFICE, T.P. CELL,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:
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1. P.M.DEVASSIA, PLAMOOTTIL HOUSE,
ETTUMANUR, KIZHAKKUMBHAGOM,
KOTTAYAM.

2. CLARAMMA DEVASSIA, W/O.P.M.DEVASSIA, DO. DO.

3. ANNA SEBASTIAN, W/O.P.D.SEBASTIAN, DO.

4. ANJU SEBASTIAN, S/O.LATE P.D.SEBASTIAN, MINOR, DO. DO.
REP.BY HIS MOTHER AND NEXT FRIEND ANNA SEBASTIAN-3RD
RESPONDENT

5. ALIYAMMA SEBASTIAN, W/O.P.D.JOYIKUTTY,
PLAMOOTTIL HOUSE, ETTUMANUR,
KIZHAKKUMBHAGOM, KOTTAYAM DISTRICT.

6. JOSHI, S/O.GEORGE, CHIRAYIL HOUSE,
ETTUMANUR, KIZHAKKUMBHAGOM, KOTTAYAM.

BY ADV. SRI.FRANKLIN ARACKAL
SRI.K.M.VARGHESE
SRI.MATHEW PHILIP EDAPPALLIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.8386 OF 2001 IN MFA.1222 OF 2001:

DISMISSED.

5.9.2007

Sd/-
J.B.KOSHY, JUDGE

Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1222 OF 20O1

Dated this the 5th day of September, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company contending mainly that the Insurance Company should not have been made liable to pay compensation as the driver of the vehicle insured has no valid driving licence and there is breach of policy condition, even though it was contended by the respondents that no evidence was produced to prove that the driver of the vehicle had no valid driving licence. The Tribunal in paragraph 17 of the award observed as follows:

> "17. Issue No.2:- Even though the 3rd respondent has contended that the driver of the scooter was not having valid driving licence, no effect is seen made by the respondent to establish the fact. Under the circumstance it can not be inferred that the 2nd respondent was not holding a valid licence. Since the insurance company claims the benefit of absence of licence it is for that respondent to establish the said fact."

In ***National Insurance Company Ltd. v. Swaran Singh*** (AIR 2004 SC 1531) the following points were summerised.

"1. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

2. Insurer is entitled to raise a defence in a claim petition filed under section 163-A or section 166 of the Motor Vehicles Act, 1988 inter alia in terms of section 149(2)(a)(ii) of the said Act.

3. The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

4. The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

5. The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

> 6. Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."

In this case, as rightly held by the Tribunal, no effort is seen made by the respondents to prove that the driver of the vehicle was having any valid driving licence and also they did not prove that the owner of the vehicle was negligent in entrusting the vehicle to the driver. In view of the above, we are of the opinion that the above defence was rejected by the Tribunal.

It is further contended that 12% interest awarded in 2000 is very high. We agree with the said contention and the interest rate is reduced to 9% from 12% from the date of application to the date of deposit. With that modification of the award, the appeal is disposed of.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, J.

M.F.A.NO.1222 OF 2001

JUDGMENT

5.9.2007